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September 15, 2016

VIA ECF

The Honorable Carol E. Jackson
Thomas F. Eagleton U.S. Courthouse
111 S. 10th Street, Suite 14.148
St. Louis, MO 63102

Re: Prime Aid Pharmacy Corp. v. Express Scripts, Inc., No. 4:16-cv-01237

Dear Judge Jackson:

This law firm represents Plaintiff Prime Aid Pharmacy Corp. ("Prime Aid") in the above-captioned matter. In advance of the Rule 16 conference scheduled for Friday, September 16, 2016 at 11:00 AM, we write regarding an issue that has arisen after the parties submitted the Joint Proposed Scheduling Plan on September 7, 2016.

In the Complaint, Prime Aid's Fraudulent Misrepresentation claim is based in large part on a letter from Defendant Express Scripts, Inc.'s ("Express Scripts") counsel of record in this action, Sarah Hellman, dated September 12, 2014, in which Ms. Hellman falsely stated, "There are no additional monies being withheld by Express Scripts." *See* Compl. Ex. I. In Express Scripts' Memorandum in Support of its Motion to Dismiss filed on September 12, 2016, regarding Prime Aid's fraudulent misrepresentation claim, Express Scripts argues that "Prime Aid also fails to allege facts demonstrating that its reliance was justified or reasonable. Prime Aid's allegation is that Express Scripts said it did not owe Prime Aid any money for prescription drug claims that Prime Aid had submitted, and Prime Aid did nothing to confirm whether this was true. As a matter of law, this is not reasonable reliance." *See* Mot. to Dismiss Mem. of Law at 12.

This argument puts Ms. Hellman's misrepresentation regarding monies owed to Prime Aid directly into issue, and counsel of record is, in Prime Aid's view, a necessary fact witness at trial. Under the Missouri Supreme Court Rules of Professional Conduct and Eighth Circuit precedent interpreting same, Express Scripts' current counsel of record—and the Husch

Blackwell firm—might be precluded from serving as counsel to Express Scripts at trial upon a motion for disqualification by Prime Aid.

We contacted Ms. Hellman on September 13, 2016 to confirm whether Husch Blackwell intends to continue to represent Express Scripts. By e-mail dated today, September 15, 2016 at 9:04 AM, Ms. Hellman advised as follows: "We are aware of the relevant law and rules and do not share your view." Although a motion to disqualify by Prime Aid has not yet been brought, we write to develop a record as to the exact point in time the issue was identified by Prime Aid's counsel—and prior to the Rule 16 conference—to give the Court an opportunity in advance of that conference to consider an appropriate schedule for briefing on this issue.

Respectfully,

/s/ Jonathan L. Swichar

JLS:ws

cc: Sarah Hellman, Esquire (*via E-mail*)
Kevin Hormuth, Esquire (*via E-mail*)
Kyle Seelbach, Esquire (*via E-mail*)